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EXAMINER

BARRY, CHESTER T

ART UNIT

PAPER NUMBER

1724

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DATE MAILED: 06/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/071,006

Applicant(s)

FETTERMAN ET AL.

Examiner

Chester T. Barry

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 - 5, drawn to a raw material made by a specified process, classified in class 210, subclass 601+.
- II. Claims 6 - 20, drawn to a method of making a soil amendment, classified in class 210, subclass 660+.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product, such as one made by a different process.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Rosenthal on 6/24/03 a provisional election was made without traverse to prosecute the invention of Group II, claims 6 - 20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1 – 5 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claims 6 – 10 are rejected under 35 USC §112(1st paragraph) due failure to provide an adequately full and clear description of the claimed invention. Claim 6 recites both composting of the “swine solid mix” and curing of the “swine solid mix” whereas the application as filed provides a full, clear, and concise written description only of composting the swine solid mix and **then** curing the resulting **composted** swine solid mix. This rejection can be overcome by inserting “after said composting step,” before “curing” or by amending claim 6 to read inter alia, “curing **said composted** swine solid mix.” To illustrate the point, composting alone or curing alone does not satisfy the claim 6 “whereby” clause: It appears that applicants believe that it is only after performing **both** steps sequentially and in order that a stabilized soil amendment is produced that is substantially free of pathogens. See, for example, page 8 line 20, “the **resulting** product is cured 4 – 6 weeks” (emphasis added).

Claims 6 – 10 are rejected under 35 USC §112, 2nd parag., for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. It is unclear whether in the “curing” step, the “swine solids mix” is the mix

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resulting from the blending step, or the mix resulting from both the blending and the composting step.

Claim 8 is rejected under 35 USC §112, 2nd parag., for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. It is unclear whether the "soil amendment," the swine solids, the swine solids mix, the composted swine solids mix, the cured swine solids mix, the both composted and cured swine solids mix, or the carbon source, or all of the above, have a C:N ratio of about 20 – 30 and a moisture content of 60%. Further, it is unclear whether the ratio is a mass or molar ratio.

Claim 10 is rejected under 35 USC §112, 2nd parag., for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. It is unclear to what material, i.e., the "soil amendment," the swine solids, the swine solids mix, the composted swine solids mix, the cured swine solids mix, the both composted and cured swine solids mix, or the carbon source, or all of the above, the clay is added.

Claims 11 – 13, 20 are rejected under 35 USC §112, 2nd parag., for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. It is unclear by what standard, aka, baseline, one determines whether the nutrient availability of the mixture is "improved." That is, the nutrient availability of the mixture is improved compared to what?

Claim 19 is rejected under 35 USC §112, 2nd parag., for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. It is unclear by what standard, aka, baseline, one determines whether the nutrient availability of the mixture is “enhanced.” That is, the nutrient availability of the mixture is enhanced compared to what?

Claims 14 – 16 are rejected under 35 USC §112, 2nd parag., for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. Claims 14 – 16, each of which depends directly from claim 10, are ostensibly directed to “soilless media,” but claim 10 is not directed to a soilless medium at all: Claim 10 is directed to a method, not a composition. It is unclear what is being claimed in claims 14 – 16: A method or a medium?

Dependent claims 14 – 16 are rejected under 35 USC §112, 4th parag., for failing to further limit the subject matter of claim 10, the claim from which they each depend directly. Claims 14 – 16 are directed to “soilless media,” but claim 10 is not directed to a soilless medium at all: Claim 10 is directed to a method, not a composition. It is unclear how the soilless media of claims 14 – 16 can include all the limitations of claim 10 from which they depend, as required of dependent claims by 35 USC § 112, 4th paragraph, if media depend from a method.

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Claims 11 – 13, 20 are rejected under 35 USC §112, 2nd parag., for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. It is unclear whether it is the carbon source has a moisture content of between about 40% and about 70%, as English grammar would suggest,¹ or whether it is the “mixture” which has a moisture content of between about 40% and about 70%, as the remainder of the application would suggest. See, in particular, page 8 lines 15 – 16: The application states that it is the “compost mix” (not the carbon source) that has a moisture content of 60%. This rejection may be overcome by inserting, “, said mixture” after “source” in claim 11.²

Claims 13, 15, 16, 17, 18, 19 are rejected under 35 USC §112, 2nd parag., for failing to particularly point out and distinctly claim the subject matter for which patent protection is sought. Given the capitalization that is indicated by applicant's claims, it appears that applicants understand the terms “Coir,” “Perlite,” and “Vermiculite” to be proprietary trademarks of some legal entity. If that is so, then applicants must follow each such trademark with the name of the generic good with which the trademark is used in association. Applicant has done so with “Coir fiber,” but not with “Perlite” and “Vermiculite.” The examiner contends that none of “coir,” perlite,” and “vermiculite” are

¹ The adjectival phrase, “having a moisture content of between about 40% and about 70%” immediately follows the phrase “composted carbon source” not the word “mixture.”

² If this particular amendment is made, Applicants should anticipate a new matter rejection. Page 8 lines 15 – 16 supports a compost mix moisture content of 60%, not 40 – 70%. Original claim 11 supports the “composted carbon source” having a moisture content of 40 – 70%, not the mixture have this moisture level. Moreover, if such were not the correct interpretation, how then could the soilless media comprise 40 – 70% moisture, 40 – 60% by vol composted swine solids, and 40 – 60% by volume “Coir” fiber. The total would exceed 100%.

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proprietary: Each appears to be a generic noun or non-proprietary adjective (source: Webster's Collegiate Dictionary, 10th edition). Appropriate correction is required.

FR 2673070 describes a similar method of making a soil amendment based on pig excrement characterized by improved nutrient bioavailability. The method does not appear to involve the separate composting of the excrement/sawdust (carbon source) mixture with non-sequential curing of the same mixture. Nevertheless, the examiner notes that but for this deficiency in this document, the invention of claim 6 would have been obvious for the length of time of the composting period is a known result-effective variable so optimization of at least this process parameter would have been obvious.

Per claim 11, it is unclear what the moisture content of the compost mass is in the French document.

None of FR 2673070, USP 6365384, USP 6182610, or JP 62-99353 appears to describe the use of coir fiber, perlite, or vermiculite. For this reason, they are cited of interest and for applicants' further study before preparing a formal response to this Office action.

Respectfully,



CHESTERT T. BARRY
PRIMARY EXAMINER

6/25/03

703-306-5921